**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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| STEVE BAYER and AARON LLOYD, on behalf of themselves and all others similarly situated,<br><br>Plaintiffs,<br><br>v.<br><br>COMCAST CABLE COMMUNICATIONS, LLC,<br><br>Defendant. | ) | Case No.<br><br>**JURY TRIAL DEMANDED** |

**CLASS ACTION COMPLAINT**

Plaintiffs Steve Bayer and Aaron Lloyd (collectively, "Plaintiffs"), individually and on behalf of all others similarly situated, by and through their counsel, bring this Class Action Complaint against Defendant Comcast Corporation ("Comcast" or "Defendant"). Plaintiffs, on their own behalf and on behalf of a class of similarly situated individuals, allege as follows upon personal knowledge as to themselves and their own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.

## I. NATURE OF THE ACTION

1. Cable and internet service are a staple in American households, viewed by many to be as ordinary and essential as gas and electric service. Comcast uses its position as the nation's largest provider of cable and internet service to collect personal information – such as names, addresses, social security numbers, and credit card numbers – from tens of millions of consumers across the country.

2. After consumers terminate their service with Comcast, however, and this information is no longer needed to provide service or collect payment, Comcast continues to

maintain personally identifiable information on all of its previous customers indefinitely. This conduct violates the Cable Communications Policy Act, 47 U.S.C. § 551, *et. seq.* ("CCPA"), which requires cable operators to destroy personally identifiable information when it is no longer required for the purpose for which it was collected.

3. Moreover, consumers are unaware that their personally identifiable information is retained indefinitely by Comcast, as Comcast fails to send annual privacy notices informing consumers that Comcast continues to retain their information. This conduct constitutes additional violations of CCPA.

4. Accordingly, Plaintiffs assert claims on their own behalf and on behalf of the other members of the below-defined Class for violations of CCPA, 47 U.S.C. § 551 (a) & (e), plus additional claims under state law on behalf of Illinois and California State Subclasses.

## II. JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, which confers upon the Court original jurisdiction over all civil actions arising under the laws of the United States, and pursuant to 18 U.S.C. §§ 2520 and 2707 and 18 U.S.C. § 1030. This Court also has supplemental jurisdiction over Plaintiffs' state statutory claims and common-law claims under 28 U.S.C. § 1367.

6. In addition, this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2). In the aggregate, Plaintiffs' claims and the claims of the other members of the Class exceed $5,000,000 exclusive of interest and costs, and there are numerous class members who are citizens of States other than Comcast's State of citizenship.

7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1301(a)(2), 1391(b)(2), and 1391(c)(2) as: a substantial part of the events and/or omissions giving rise to the claims

emanated from activities within this District, and Comcast conducts substantial business in this District. Specifically, Comcast provides cable and internet services for residents and commercial facilities in towns and cities throughout this District, subjecting it to this Court's personal jurisdiction and making it a "resident" of this District for purposes of venue.

## III. PARTIES

***Plaintiffs***

8. Steve Bayer ("Bayer") is a natural person and citizen of the State of Illinois.

9. Aaron Lloyd ("Lloyd") is a natural person and citizen of the State of California.

***Defendant***

10. Comcast is a Pennyslvania corporation headquartered at 1701 John F. Kennedy Boulevard in Philadelphia, Pennsylvania. Comcast is the nation's largest cable operator, servicing over 20 million customers. Comcast provides cable and other services to customers in 39 states, including the State of Illinois.

## IV. FACTUAL BACKGROUND

***The Cable Communications Policy Act***

11. On October 30, 1984, Congress passed the Cable Communications Policy Act ("CCPA") in order to promote competition among providers of cable services and establish a national policy concerning cable communications and their operators. An important objective of Congress in establishing such a policy was to protect cable subscribers' sensitive personal information from misuse and improper disclosure. To that end, Congress made sure that the Act incorporated privacy guidelines jointly established several years earlier by the 34 nations comprising the Organization for Economic Cooperation and Development.

12. When CCPA was under debate, legislative leaders noted that both common-sense privacy concerns and the constitutional rights of citizens were at stake:

> Cable systems, particularly those with a 'two-way' capability, have an enormous capacity to collect and store personally identifiable information about each cable subscriber. Subscriber records from interactive systems can reveal details about bank transactions, shopping habits, political contributions, viewing habits and other significant personal decisions. It is [therefore] important that national cable legislation establish a policy to protect the privacy of cable subscribers. A national policy is needed because, while some franchise agreements restrict the cable operator's use of such information, privacy issues raise a number of federal concerns, including protection of the subscribers' first, fourth, and fifth amendment rights. At the same time, such a policy must also recognize and unnecessarily or unreasonably impede those flows of information necessary to provide the service to the subscribers.

H.R. Rep. 98-934 at 4666-67 (1984).

13. These observations, now nearly 30 years old, are just as relevant today. Subscribers continue to disclose some of their most sensitive identifying information to their cable operator as a condition to entering into a contract for service. Now – far more than ever before – Comcast and other cable operators are equipped to rapidly collect and indefinitely retain large volumes of this valuable data in their electronic records.

14. There are numerous serious and troubling privacy issues implicated by Comcast's practice of retaining and misusing their former customers' personal information, including the risk of identity theft and conversion of personal financial accounts.

15. Accordingly, CCPA affords consumers significant protection with respect to the collection, maintenance, and disclosure of personally identifiable information ("PII") provided by the subscriber to the cable operator.

16. Specifically, CCPA requires cable operators to provide annual notice setting forth the "nature of personally identifiable information collected;" "the nature, purpose, and frequency

of any disclosure" of that information; the "period during which such information will be maintained;" "the times and place at which the subscriber may have access to such information;" and the limitations imposed on the cable operator by this provision of CCPA. 47 U.S.C. § 551(a)(1).

17. In addition, CCPA governs the way that cable operators are to destroy the PII of former subscribers. CCPA requires that cable operators destroy the PII of former subscribers "if the information is no longer necessary for the purpose for which it was collected" and there are no outstanding requests or orders for such information. 47 U.S.C. § 551(e).

18. Under CCPA, "personally identifiable information" is not specifically defined. However, the courts have concluded that it broadly encompasses "specific information about the subscriber, or a list of names and addresses on which the subscriber is included."[1]

***Comcast's Collection of Consumers' PII***

19. Founded in Mississippi in 1963, Comcast has rapidly grown to become the largest cable television operator and provider of home internet service in the United States, as well as the nation's third-largest provider of home telephone service. In 40 states as well as the District of Columbia, Comcast offers a wide range of services that includes cable television, broadband internet, telephone service, and home security for residential customers as well as commercial facilities.[2] Comcast serves 23 million cable television customers, approximately 17 million high-speed Internet customers, and nearly 9 million voice customers.[3] In 2011, the company earned nearly $56 billion in gross revenues and had a net income of approximately $4.2 billion.[4]

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[1] *See, e.g., Scofield v. Telecable of Overland Park, Inc.*, 973 F.2d 874, 876 fn. 2 (10th Cir. 1992).

[2] http://en.wikipedia.org/wiki/Comcast#cite_note-annual_report-2 (last visited October 26, 2012).

[3] *Comcast Reports First Quarter 2011 Results*, www.cmcsk.com/releasedetail.cfm?ReleaseID=574179 (March 31, 2011).

[4] *2010 Form 10-K, Comcast Corporation*, United States Securities and Exchange Commission (March 14, 2011).

20. Comcast requests that subscribers provide PII to Comcast in order to receive cable and Internet service, including social security number, address, phone number, and credit and debit card information.

21. Once Comcast obtains that information, it maintains a digital record system with every subscriber's personal information, adding to each consumer's file as they acquire more information.

22. Comcast's online Customer Privacy Policy provides, in pertinent part, as follows:

> Comcast maintains personally identifiable information about you in our regular business records while you are a subscriber to our cable service or other services. We also maintain this information for a period of time after you are no longer a subscriber if the information is necessary for the purposes for which it was collected or to satisfy legal requirements. These purposes typically include business, legal, or tax purposes. If these purposes no longer apply, we will destroy the information according to our internal policies and procedures.[5]

***Comcast's Unlawful Retention of Consumers' PII***

23. While Comcast's Privacy Policy claims that consumer information is destroyed "according to our internal policies and procedures," in practice, Comcast simply retains consumers' PII indefinitely.

24. This indefinite retention of PII is prohibited by CCPA, which requires cable operators to "destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected." 47 U.S.C. § 551(e).

25. Comcast also fails to provide CCPA-mandated privacy notices to customers whose accounts have been closed, but whose information is still retained by Comcast. Those consumers are thus unaware that their information is retained indefinitely by Comcast.

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[5] http://www.comcast.com/Corporate/Customers/Policies/CustomerPrivacy.html (last visited October 26, 2012).

26. CCPA requires that cable operators provide written notice at least once a year regarding the retention and disclosure of PII, "clearly and conspicuously" informing the consumer of "the nature of personally identifiable information collected ... and the nature of the use of such information; [ ] the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made; [ ] the period during which such information will be maintained by the cable operator; [and] the times and places at which the subscriber may have access to such information." 47 U.S.C. § 551(a).

27. After the termination of services, Comcast fails to provide notice to consumers regarding the type of PII collected and retained, and any disclosure of that information that may have occurred.

***Consumers Place a High Value on Their PII***

28. At a Federal Trade Commission ("FTC") public workshop in 2001, then-Commissioner Orson Swindle described the value of a consumer's personal information as follows:

> The use of third party information from public records, information aggregators and even competitors for marketing has become a major facilitator of our retail economy. Even [Federal Reserve] Chairman [Alan] Greenspan suggested here some time ago that it's something on the order of the life blood, the free flow of information.[6]

[6] *The Information Marketplace: Merging and Exchanging Consumer Data*, http://www.ftc.gov/bcp/workshops/infomktplace/transcript.htm (last visited October 26, 2012).

29. Though Commissioner's Swindle's remarks are more than a decade old, they are even more relevant today, as consumers' personal data functions as a "new form of currency" that supports a $26 billion per year online advertising industry in the United States.[7]

30. The FTC has also recognized that consumer data is a new – and valuable – form of currency. In a recent FTC roundtable presentation, another former Commissioner, Pamela Jones Harbour, underscored this point by observing:

> Most consumers cannot begin to comprehend the types and amount of information collected by businesses, or why their information may be commercially valuable. Data is currency. The larger the data set, the greater potential for analysis – and profit.[8]

31. Recognizing the high value that consumers place on their PII, many companies now offer consumers an opportunity to sell this information to advertisers and other third parties. The idea is to give consumers more power and control over the type of information that they share – and who ultimately receives that information. And by making the transaction transparent, consumers will make a profit from the surrender of their PII.[9] This business has created a new market for the sale and purchase of this valuable data.[10]

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[7] *See Web's Hot New Commodity: Privacy*, http://online.wsj.com/article/SB10001424052748703529004576160764037920274.html (last visited October 26, 2012).

[8] *Statement of FTC Commissioner Pamela Jones Harbour* (Remarks Before FTC Exploring Privacy Roundtable), http://www.ftc.gov/speeches/harbour/091207privacyroundtable.pdf (last visited October 26, 2012).

[9] *You Want My Personal Data? Reward Me for It*, http://www.nytimes.com/2010/07/18/business/18unboxed.html (last visited October 26, 2012).

[10] *See Web's Hot New Commodity: Privacy*, http://online.wsj.com/article/SB10001424052748703529004576160764037920274.html (last visited October 26, 2012).

32. In fact, consumers not only place a high value on their PII, but also place a high value on the *privacy* of this data. Thus, the question is not *whether* consumers value such privacy; the question is "*how much* [consumers] value" that privacy.[11]

33. Researchers have already begun to shed light on how much consumers value their data privacy – and the amount is considerable. Indeed, studies confirm that "when [retailers'] privacy information is made more salient and accessible, some consumers are willing to pay a premium to purchase from privacy protective websites."[12]

34. When consumers were surveyed as to how much they valued their personal data in terms of its protection against improper access and unauthorized secondary use – two concerns at issue here – they valued the restriction of improper access to their data at between $11.33 and $16.58 per website, and prohibiting secondary use to between $7.98 and $11.68 per website.[13]

35. Given these facts, any company that transacts business with a consumer and then retains that consumer's PII in contravention of statutorily guaranteed privacy protections has thus deprived that consumer of the full monetary value of the consumer's transaction with the company.

***Facts Pertaining to Plaintiff Bayer***

36. In or about July 2006, Bayer signed up for Comcast cable services. Bayer provided Comcast with PII including his address, telephone number, and social security number, in order to receive the service.

37. In or about July 2007, Bayer canceled his service with Comcast.

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[11] Hann *et al.*, *The Value of Online Information Privacy: An Empirical Investigation* (Mar. 2003) at 2, *available at* http://www.comp.nus.edu.sg/~ipng/research/privacy.pdf (emphasis added) (last visited October 26, 2012).

[12] Tsai, Cranor, Acquisti, and Egelman, *The Effect of Online Privacy Information on Purchasing Behavior*, 22(2) Information Systems Research 254, 254 (June 2011).

[13] *Id.*

38. As of the date of this filing, Comcast still retains Bayer's PII.

39. Since canceling his service, Bayer has never received notice from Comcast informing him that Comcast still retains his PII. Specifically, Bayer has not received any notices from Comcast informing him of the nature of the information collected; the nature, purpose and frequency of any disclosure which was made of this information; the period of time during which Comcast will maintain this information; and the time and place that Bayer may gain access to this information.

***Facts Pertaining to Plaintiff Lloyd***

40. In June 2008, Lloyd signed up for Comcast broadband internet services. Lloyd provided Comcast with PII including his address, telephone number, and social security number, in order to receive Internet service.

41. In August 2010, Lloyd canceled his service with Comcast.

42. As of the date of this filing, Comcast still retains Lloyd's PII.

43. Since canceling his service, Lloyd has never received notice from Comcast informing him that Comcast still retains his PII. Specifically, Lloyd has not received any notices from Comcast informing him of the nature of the information collected; the nature, purpose and frequency of any disclosure which was made of this information; the period of time during which Comcast will maintain this information; and the time and place that Lloyd may gain access to this information.

## V. CLASS ACTION ALLEGATIONS

44. Plaintiffs bring Counts I and III, as set forth below, on behalf of themselves and as a class action, pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of a class defined as:

> All persons in the United States who signed up for cable or internet service with Comcast, and whose personally identifiable information was retained by Comcast after the termination of services (the "Retention Class").

Excluded from the Retention Class are Comcast and its subsidiaries and affiliates; all persons who make a timely election to be excluded from the Retention Class; governmental entities; and the judge to whom this case is assigned and any immediate family members thereof.

45. Plaintiffs bring Count II, as set forth below, on behalf of themselves and as a class action, pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of a class defined as:

> All persons in the United States who signed up for cable or internet service with Comcast, and who were never issued annual written notices from Comcast regarding Comcast's retention or disclosure of their personally identifiable information (the "Notice Class").

Excluded from the Notice Class are Comcast and its subsidiaries and affiliates; all persons who make a timely election to be excluded from the Notice Class; governmental entities; and the judge to whom this case is assigned and any immediate family members thereof.

46. Plaintiff Bayer brings Count IV, as set forth below, on behalf of himself and as a class action, pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of a subclass defined as:

> All persons residing in the State of Illinois who signed up for cable service with Comcast, and whose personally identifiable information was retained by Comcast after the termination of services (the "Illinois State Class").

Excluded from the Illinois State Class are Comcast and its subsidiaries and affiliates; all persons who make a timely election to be excluded from the Illinois State Class; governmental entities; and the judge to whom this case is assigned and any immediate family members thereof.

47. Plaintiff Lloyd brings Counts V and VI, as set forth below, on behalf of himself and as a class action, pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of a subclass defined as

> All persons residing in the State of California who signed up for cable service with Comcast, and whose personally identifiable information was retained by Comcast after the termination of services (the "California State Class").

Excluded from the California State Class are Comcast and its subsidiaries and affiliates; all persons who make a timely election to be excluded from the California State Class; governmental entities; and the judge to whom this case is assigned and any immediate family members thereof.

48. The Retention Class, Notice Class, Illinois State Class, and California State Class shall be referred to collectively as "the Class" below unless otherwise specified.

49. Certification of Plaintiffs' claims for classwide treatment is appropriate because Plaintiffs can prove the elements of their claims on a classwide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

50. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The members of the class are so numerous that individual joinder of all Class members in impracticable. On information and belief, there are thousands of consumers who have been affected by Comcast's wrongful conduct. The precise number of the Class members and their addresses is presently unknown to Plaintiffs, but may be ascertained from Comcast's books and records. Class

members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

51. **Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3).** This action involves common questions of law and fact, which predominate over any questions affecting individual Class members, including, without limitation:

a. whether Comcast engaged in the conduct as alleged herein;

b. whether Plaintiffs and the other Class members are entitled to actual, statutory, or other forms of damages, and other monetary relief and, if so, in what amount(s); and

c. whether Plaintiffs and other Class members are entitled to equitable relief, including but not limited to injunctive relief and restitution.

52. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs' claims are typical of the other Class members' claims because, among other things, all Class members were comparably injured through the uniform misconduct described above.

53. **Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4)**. Plaintiffs are adequate representatives of the Class because their interests do not conflict with the interests of the other Class members they seek to represent; they have retained counsel competent and experienced in complex class action litigation; and Plaintiffs intend to prosecute this action vigorously. The Class members' interests will be fairly and adequately protected by Plaintiffs and their counsel.

54. **Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2).** Comcast has acted or refused to act on grounds generally applicable to Plaintiffs and the other

Class members, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to Class members as a whole.

55. **Superiority – Federal Rule of Civil Procedure 23(b)(3)**. A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Comcast, so it would be impracticable for Class members to individually seek redress from Comcast's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

## VI. CLAIMS ALLEGED

### COUNT I
**Failure to Destroy Personally Identifiable Information**
**Violation of § 551(e) of the Cable Communications Policy Act**
**(On Behalf of the Retention Class)**

56. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1-55 as though fully set forth herein.

57. Comcast is a "cable operator" as defined by CCPA because Comcast provides "cable services," which is "the one-way transmission to subscribers of [ ] video programming, or [ ] other programming service; [and] subscriber interaction, if any, which is required for the

selection or use of such video programming or other programming service." 47 U.S.C. § 522(5) & (6).

58. CCPA mandates, among other things, that a cable operator "destroy personally identifiable information if the information is no longer necessary for the purpose for which is was collected." 47 U.S.C. § 551(e).

59. After Plaintiffs' accounts and the accounts of each of the members of the Retention class were terminated, Comcast continued to maintain Plaintiffs' PII even though such information was no longer necessary to maintain for the purpose for which it was collected.

60. The foregoing conduct violates 47 U.S.C. § 551(e).

61. Plaintiffs and the Retention Class have suffered injuries as a result of Comcast's violation of 47 U.S.C. § 551. Comcast's failure to destroy the PII of Plaintiffs and the Retention Class, as required 47 U.S.C. § 551, constitutes injury in the form of a direct invasion of their federally protected privacy rights. In addition, Comcast's failure to comply with CCPA has deprived Plaintiffs and the Retention Class of their ability to make informed decisions with respect to their privacy.

62. Moreover, since Plaintiffs and the Retention Class purchased cable and Internet services from Comcast, and Comcast was obligated to comply with CCPA, Comcast's failure to destroy their PII deprived them of the full value of the services that they bargained and paid for. Because Plaintiffs and the Retention Class ascribe monetary value to their ability to control their PII, Plaintiffs and the Retention Class have sustained, and continue to sustain, monetary and economic injuries as a direct and proximate result of Comcast's violation of 47 U.S.C. § 551.

63. Plaintiffs' and the Retention Class' PII constitutes personal property. Comcast's failure to comply with 47 U.S.C. § 551 has also deprived Plaintiffs and the Retention Class of the

opportunity to control that personal property for its own financial gain. Accordingly, Plaintiffs and the Retention Class have sustained, and continue to sustain, monetary and economic injuries as a direct and proximate result of Comcast's violation of 47 U.S.C. § 551.

64. CCPA provides a private right of action to consumers who have been aggrieved by a violation of 47 U.S.C. § 551. Specifically, any person aggrieved by any act of a cable operator violating 47 U.S.C. § 551 may recover "actual damages but not less than liquidated damages computed at the rate of $100 a day for each day of violation or $1,000, whichever is higher." 47 U.S.C. § 551(f)(2)(A).

65. In addition, any person aggrieved by any act of a cable operator violating 47 U.S.C. § 551 may recover punitive damages and "reasonable attorneys' fees and other litigation costs reasonably incurred." 47 U.S.C. § 551(f)(2)(B)&(C).

66. Plaintiffs, on behalf of themselves and the Retention Class, therefore seek redress as provided by 47 U.S.C. § 551, including liquidated damages to the full extent permitted by CCPA, punitive damages, and reasonable attorneys' fees and other litigation costs.

## COUNT II
## Failure to Provide Adequate Notice
## Violation of § 551(a) of the Cable Communications Policy Act
## (On Behalf of the Notice Class)

67. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1-55 as though fully set forth herein.

68. After the termination of services, Comcast continued to maintain Plaintiffs' PII and the PII of each of the members of the Notice Class.

69. Plaintiffs and each of the members of the Notice Class did not receive a yearly privacy notice from Comcast as required under CCPA.

70. The foregoing conduct violates 47 U.S.C. § 551(a).

71. Plaintiffs and the Notice Class have suffered injuries as a result of Comcast's violation of 47 U.S.C. § 551. Comcast's failure to issue annual notices under CCPA, as required 47 U.S.C. § 551, constitutes injury in the form of a direct invasion of the federally protected privacy rights of Plaintiffs and the Notice Class. In addition, Comcast's failure to comply with CCPA has deprived Plaintiffs and the Notice Class of their ability to make informed decisions with respect to their privacy.

72. Moreover, since Plaintiffs and the Notice Class purchased cable and Internet services from Comcast, and Comcast was obligated to comply with CCPA, Comcast's failure to issue the requisite annual notices deprived them of the full value of the services that they bargained and paid for. Because Plaintiffs and the Notice Class ascribe monetary value to their ability to control their PII, Plaintiffs and the Notice Class have sustained, and continue to sustain, monetary and economic injuries as a direct and proximate result of Comcast's violation of 47 U.S.C. § 551.

73. Plaintiffs' and the Notice Class' PII constitutes personal property. Comcast's failure to comply with 47 U.S.C. § 551 has also deprived Plaintiffs and the Notice Class of the opportunity to control that personal property for their own financial gain. Accordingly, Plaintiffs and the Notice Class have sustained, and continue to sustain, monetary and economic injuries as a direct and proximate result of Comcast's violation of 47 U.S.C. § 551.

74. CCPA provides a private right of action to consumers who have been aggrieved by a violation of 47 U.S.C. § 551. Specifically, any person aggrieved by any act of a cable operator violating 47 U.S.C. § 551 may recover "actual damages but not less than liquidated damages computed at the rate of $100 a day for each day of violation or $1,000, whichever is higher." 47 U.S.C. § 551(f)(2)(A).

75. In addition, any person aggrieved by any act of a cable operator violating 47 U.S.C. § 551 may recover punitive damages and "reasonable attorneys' fees and other litigation costs reasonably incurred." 47 U.S.C. § 551(f)(2)(B)&(C).

76. Plaintiffs, on behalf of themselves and the Notice Class, therefore seek redress as provided by 47 U.S.C. § 551, including liquidated damages to the full extent permitted by CCPA, punitive damages, and reasonable attorneys' fees and other litigation costs.

**COUNT III**
**Breach of Implied Contract**
**(On Behalf of the Retention Class)**

77. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1-66 as though fully set forth herein.

78. Those who subscribed to Comcast's cable service, including Plaintiffs, were required by Comcast to provide their social security number, address, phone number, and credit card information.

79. In providing this personal data to Comcast, Plaintiffs and other members of the Retention Class entered into an implied contract with Comcast (the "Contract"). Pursuant to the Contract, Comcast became obligated to safeguard this data through all reasonable measures. This obligation includes complying with industry standards.

80. The industry standard applicable to the credit-card transaction described above is set forth in Requirement 3.1 of the Data Security Standard (DSS) promulgated by the Payment Card Industry Security Standards Council. Specifically, that standard requires merchants to implement the following security measures:

> Keep cardholder data storage to a minimum by implementing data retention and disposal policies, procedures and processes, as follows.
>
> Implement a data retention and disposal policy that includes:
>
> - Limiting data storage amount and retention time to that which is required for legal, regulatory, and business requirements
> - Processes for secure deletion of data when no longer needed
> - Specific retention requirements for cardholder data
> - A quarterly automatic or manual process for identifying and securely deleting stored cardholder data that exceeds defined retention requirements[.][14]

81. Comcast breached its Contract with Plaintiffs and the Retention Class by failing to adopt and comply with the foregoing industry-standard practices, and by failing to destroy PII after the information is no longer necessary for the purpose for which it was collected.

82. In addition, because the laws existing at the time and place of the making of the Contract are and were incorporated into the Contract, the Contract included obligations for the parties to abide by all statutory and legal requirements, including those imposed by CCPA.

83. Plaintiffs and the Retention Class performed their obligations under the Contract by paying the consideration owed to Comcasr for the provision of cable service, and by complying with all applicable laws then in force.

84. Comcast's failure to perform its contractual obligations imposed by CCPA – *i.e.*, the timely destruction of consumers' PII – constitutes a material breach of the Contract.

85. Plaintiffs and the Retention Class have suffered actual damages as a result of Comcast's breach in the form of the value Plaintiffs and the Retention Class ascribe to the confidentiality and timely destruction of their PII. This amount is tangible and can be calculated at trial.

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[14] PCI Security Standards Council LLC, Navigating PCI DDS: Understanding the Intent of the Requirements, v2.0 (October 2010), p. 20.

86. Further, a portion of the services purchased by Plaintiffs and the Retention Class was intended to pay for Comcast's costs in timely destroying its customers' PII, as required by CCPA.

87. Because Plaintiffs and the Retention Class were denied services that they bargained and paid for and were entitled to receive—*i.e.*, confidentiality of their PII and timely destruction of same—Plaintiffs and the Retention Class incurred actual monetary damages in that they overpaid for the services they bargained for.

88. Accordingly, Plaintiffs and the Retention Class seek an order declaring that Comcast's conduct constitutes a breach of contract, and awarding Plaintiff and the Retention Class damages in an amount to be calculated at trial.

**COUNT IV**
**Violation of the Illinois Cable and Video Customer Protection Law**
**(On Behalf of the Illinois State Class)**

89. Plaintiff Bayer ("Plaintiff" for purposes of this Count IV) adopts and incorporates by reference paragraphs 1-76 of this Complaint as if fully set forth herein.

90. The Illinois Cable and Video Customer Protection Law ("Illinois Cable Act") provides in pertinent part:

> Cable or video providers shall not disclose the name, address, telephone number or other personally identifying information of a cable service or video service customer to be used in mailing lists or to be used for other commercial purposes not reasonably related to the conduct of its business unless the cable or video provider has provided to the customer a notice, separately or included in any other customer service notice, that clearly and conspicuously describes the customer's ability to prohibit the disclosure. Cable or video providers shall provide an address and telephone number for a customer to use without a toll charge to prevent disclosure of the customer's name and address in mailing lists or for other commercial purposes not reasonably related to the conduct of its business to other businesses or affiliates of the cable or video provider. ***Cable or video providers shall comply with the***

> ***consumer privacy requirements of the Communications Consumer Privacy Act, the Restricted Call Registry Act, and 47 U.S.C. 551 that are in effect as of June 30, 2007*** (the effective date of Public Act 95-9) and as amended thereafter.

220 ILCS 5/22-501(p) (emphasis added).

91. After Plaintiff terminated his cable service with Comcast, Comcast continued to maintain Plaintiff's PII, even though such information was no longer necessary to maintain for the purpose for which it was collected. Comcast's conduct thus violated 47 U.S.C. § 551(e).

92. In addition, Plaintiff did not receive a yearly privacy notice from Comcast as required under CCPA. Comcast's conduct thus also violated 47 U.S.C. § 551(a).

93. The foregoing violations of 47 U.S.C. § 551 constitute violations of the Illinois Cable Act.

94. Plaintiff and the Illinois State Class have suffered injuries as a result of Comcast's violation of the Illinois Cable Act. Comcast's failure to destroy the PII of Plaintiff and the Illinois State Class, as required by the Illinois Cable Act and 47 U.S.C. § 551, constitutes injury in the form of a direct invasion of statutorily-protected privacy rights. In addition, Comcast's failure to issue annual notices, as required by the Illinois Cable Act and 47 U.S.C. § 551, has deprived Plaintiff and the Illinois State Class of their ability to make informed decisions with respect to their privacy.

95. The Illinois Cable Act establishes a private right of action against cable providers for violations of the Act:

> Any customer, the Attorney General, or a local unit of government may pursue alleged violations of this Act by the cable or video provider in a court of competent jurisdiction. A cable or video provider may seek judicial review of a decision of a local unit of government imposing penalties in a court of competent jurisdiction. No local unit of government shall be subject to suit for damages or other relief based upon its action in connection

> with its enforcement or review of any of the terms, conditions, and rights contained in this Act except a court may require the return of any penalty it finds was not properly assessed or imposed.

220 ILCS § 5/22-501(r)(4).

96. Each cable subscriber who suffers a violation of the Illinois Cable Act's privacy protections, as set forth above, is entitled to receive a credit of $150.00 from the cable provider. If the customer is no longer taking service from the cable provider, the customer is entitled to receive the payment by check. 220 ILCS § 5/22-501(s).

97. Plaintiff, on behalf of himself and the Illinois State Class, therefore seeks redress as provided by 220 ILCS § 5/22-501, including the statutorily required cash payment in addition to reasonable attorneys' fees and other litigation costs.

## COUNT V
**Violation of the California Customer Records Act,**
**Cal.Civ.Code § 1798.80, *et seq.***
**(On Behalf of the California State Class)**

98. Plaintiff Lloyd ("Plaintiff" for purposes of this Count V) adopts and incorporates by reference paragraphs 1-55 of this Complaint as if fully set forth herein.

99. The California Customer Records Act ("CCRA") provides, in pertinent part, that

> A business shall take all reasonable steps to dispose, or arrange for the disposal, of customer records within its custody or control containing personal information when the records are no longer to be retained by the business by (a) shredding, (b) erasing, or (c) otherwise modifying the personal information in those records to make it unreadable or indecipherable through any means.

Cal.Civ.Code § 1798.81.

100. Under the CCRA, "personal information" is defined as

> any information that identifies, relates to, describes, or is capable of being associated with, a particular individual, including, but not limited to, his or her name, signature, social security number, physical characteristics or description, address, telephone number,

> passport number, driver's license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information[.]

Cal.Civ.Code § 1798.80 (emphasis added).

101. Plaintiff and the other members of the California State Class cancelled their subscription to and no longer use Comcast's services. Therefore, Comcast no longer has any reason to retain the sensitive personal information of Plaintiff and the California State Class. Nonetheless, Comcast has continued to retain this personal information in its records.

102. In addition, on information and belief, Comcast has not taken a single step toward shredding, erasing, encrypting, or otherwise modifying Plaintiff's and the California State Class' personal information so as to make it unreadable or undecipherable by others.

103. Plaintiff and the California State Class have suffered injuries as a result of Comcast's violation of the CCRA. Comcast's failure to destroy their PII as required by the CCRA constitutes injury in the form of a direct invasion of their statutory rights. In addition, Comcast's failure to comply with the CCRA has deprived Plaintiff and the California State Class of their ability to make informed decisions with respect to their privacy.

104. Moreover, since Plaintiff and the California State Class purchased cable services from Comcast, and Comcast was obligated to comply with the CCRA, Comcast's failure to destroy their PII deprived them of the full value of the services that they bargained and paid for. Because Plaintiff and the California State Class ascribe monetary value to their ability to control their PII, Plaintiff and the California State Class have sustained, and continue to sustain, monetary and economic injuries as a direct and proximate result of Comcast's violation of the CCRA.

105. Plaintiff's and the California State Class' PII constitutes personal property. Comcast's failure to comply with the CCRA has also deprived Plaintiff and the California State Class of the opportunity to control that personal property for its own financial gain. Accordingly, Plaintiff and the California State Class have sustained, and continue to sustain, monetary and economic injuries as a direct and proximate result of Comcast's violation of the CCRA.

106. The CCRA provides a private right of action to consumers. Specifically, it states that "[a]ny customer injured by a violation of this title may institute a civil action to recover damages." Cal.Civ.Code § 1798.84(b). In addition, the CCRA provides that "any business that violates, proposes to violate, or has violated this title may be enjoined." Cal.Civ.Code § 1798.84(e).

107. Plaintiff, on his own behalf and on behalf of the other members of the California State Class, seeks judgment in his favor and against Comcast, and awarding him and the other members of the California State Class injunctive relief and the maximum damages available under Cal.Civ.Code § 1798.84.

## COUNT VI
## Violation of Cal. Penal Code § 637.5
## (On Behalf of the California State Class)

108. Plaintiff Lloyd ("Plaintiff" for purposes of this Count VI) adopts and incorporates by reference paragraphs 1-55 of this Complaint as if fully set forth herein.

109. Section 637.5 of the California Penal Code provides in pertinent part:

> Individual subscriber viewing responses or other individually identifiable information derived from subscribers ***may be retained and used by a satellite or cable television corporation only to the extent reasonably necessary for billing purposes and internal business practices, and to monitor for unauthorized reception of services.*** A satellite or cable television corporation may compile, maintain, and distribute a list containing the names and addresses of its subscribers if the list contains no other individually

> identifiable information and if subscribers are afforded the right to elect not to be included on the list. However, a satellite or cable television corporation shall maintain adequate safeguards to ensure the physical security and confidentiality of the subscriber information.

Cal. Penal Code § 637.5(b) (emphasis added).

110. If a cable operator violates the above section of the California Penal Code, the subscriber may assert a private right of action for invasion of privacy. Section 637.5 provides in pertinent part:

> Any aggrieved person may commence a civil action for damages for invasion of privacy against any satellite or cable television corporation, service provider, or person that leases a channel or channels on a satellite or cable television system that violates the provisions of this section.

Cal. Penal Code § 637.5(i) (the "California Penal Code").

111. Plaintiff and the other members of the California State Class cancelled their subscription to and no longer use Comcast's services. Therefore, Comcast no longer has any reason to retain the sensitive personal information of Plaintiff and the California State Class. Nonetheless, Comcast has continued to retain this personal information in its records.

112. In addition, on information and belief, Comcast has not taken a single step toward shredding, erasing, encrypting, or otherwise modifying Plaintiff's and the California State Class' personal information so as to make it unreadable or undecipherable by others.

113. Plaintiff and the California State Class have suffered injuries as a result of Comcast's violation of the California Penal Code. Comcast's failure to destroy their PII as required by the California Penal Code constitutes injury in the form of a direct invasion of their statutory rights. In addition, Comcast's failure to comply with the California Penal Code has

deprived Plaintiff and the California State Class of their ability to make informed decisions with respect to their privacy.

114. Moreover, since Plaintiff and the California State Class purchased cable services from Comcast, and Comcast was obligated to comply with the California Penal Code, Comcast's failure to destroy their PII deprived them of the full value of the services that they bargained and paid for. Because Plaintiff and the California State Class ascribe monetary value to their ability to control their PII, Plaintiff and the California State Class have sustained, and continue to sustain, monetary and economic injuries as a direct and proximate result of Comcast's violation of the California Penal Code.

115. Plaintiff's and the California State Class' PII constitutes personal property. Comcast's failure to comply with the CCRA has also deprived Plaintiff and the California State Class of the opportunity to control that personal property for its own financial gain. Accordingly, Plaintiff and the California State Class have sustained, and continue to sustain, monetary and economic injuries as a direct and proximate result of Comcast's violation of the California Penal Code.

116. Plaintiff, on his own behalf and on behalf of the other members of the California State Class, seeks judgment in his favor and against Comcast, and awarding him and the other members of the California State Class injunctive relief and the maximum statutory damages available under the California Penal Code.

## VII. JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of all claims in this Complaint so triable.

## VIII. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the other members of the Class proposed in this Complaint, respectfully request that the Court enter an Order awarding the following relief:

A. Declaring that this action may be maintained as a class action, and certifying the Class as requested herein;

B. Enjoining Comcast from the unlawful practices and statutory violations asserted herein;

C. An Order awarding liquidated damages pursuant to CCPA;

D. An Order awarding punitive damages pursuant to CCPA;

E. An Order awarding compensatory and punitive damages pursuant to the Illinois and California statutes and common-law causes of action asserted herein;

F. An Order awarding attorneys' fees and costs pursuant to CCPA; and

G. Such other and further relief as may be just and proper.

Dated: October 27, 2012

Respectfully submitted,

STEVE BAYER and AARON LLOYD, on behalf of themselves and all others similarly situated,

By: ______________________________
One of the Attorneys for Plaintiffs
And the Proposed Putative Classes

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